

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3796 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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SAGARAMA VIBHAG KELAVANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

MR RN SHAH for Petitioner
MR MA BUKHARI, AGP, for Respondent No. 1, 2
None present for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/08/2000

ORAL JUDGEMENT

1. The petitioner, a registered public trust under
the provisions of the Bombay Public Trusts Act, filed
this petition under Article 226 of the Constitution and
prayed for direction to the respondent No.3 to register

the name of the petitioner-trust and the school and grant registration by further directing the respondents No.1 and 2 to pay the grant to the petitioner-trust in accordance with law and permission to start Std.IX. Prayer has also been made for grant of interim relief in para-12(C) of the petition, which reads as under:

(C) Pending the hearing and final disposal of this special civil application by this Honourable Court, be pleased to grant interim relief directing the respondent No.3 to register the name of the petitioner-trust and the school pursuant to the order dated 27-10-89 by further directing the respondents No.1 and 2 to pay grant in accordance with the law and the permission to start Std.IX forthwith.

2. This special civil application was placed in Court for preliminary hearing on 3-6-1992 on which date, it was admitted and ad-interim relief in terms of para-12 (C) has also been granted. This ad-interim relief granted on 3-6-1992 was ordered to be continued till further orders by the Court on 7-8-1992 and the learned counsel for the respondents does not dispute that this interim relief continues till date.

3. Reply to the special civil application has been filed by the respondent No.2, but the respondent No.3 has not filed any reply. Not only this, nobody is present on its behalf in the Court to make oral submissions also. From the fact that reply has not been filed by the respondent No.3 as well as nobody is present in the Court on its behalf, it can reasonably inferred that the respondent No.3 has no objection in case this petition is allowed by the Court.

4. The facts of the case are to be briefly stated to appreciate and decide the controversy raised in this special civil application. The petitioner-trust desirous to start a secondary school at village Chathi made an application to the respondent No.1 and the respondent No.1 under its order dated 27-10-1989 purported to be passed under sec. 48 of the Gujarat Secondary Education Act, 1972, granted permission in favour of the petitioner to start a secondary school at the village aforesaid. After this order of the respondent No.1, the petitioner opened a bank account in the joint name of the petitioner and the District Education Officer, Panchmahals at Godhra and Rs.75,000/- were deposited in that account as per the rules on 22-1-1990. As the permission to start the secondary school has been granted to the petitioner by

the respondent No.1 in mid term, it was not possible for the petitioner to get the students and start the school and accordingly, the petitioner started the school at the village aforesaid from June, 1990 and it is running. In para-III of the special civil application, the petitioner has given out the number of students studying in school in different years. The respondent No.2, in the academic years 1990-91 and 1991-92 made twice inspection of the school and reported that 23 students are studying in the school of the petitioner-trust. In the inspection report for the academic year 1990-91, the respondent No.2 noted the fact that in Std. VIII there are as many as 28 students. The petitioner made an application to the Deputy Secretary, Education Department, Gandhinagar and the Gujarat Secondary Education Board on 16-10-1991 complaining therein that in spite of the fact that the school is running and the order passed by the State Government to start the secondary school from 27-10-1989 and all the formalities were complied with, the Gujarat Secondary Education Board is not registering the name of the petitioner-school. Copy of this application was sent to the Chairman of the Gujarat Secondary Education Board also. The respondent No.1, as what it is the grievance of the petitioner, instead of directing the Board to register the name of the school passed an order dated 15-11-1991, cancelling the permission to start the school which has been granted to the petitioner-trust under its earlier order dated 27-10-1991. The petitioner submits that this order has been passed without giving notice and an opportunity of hearing to it and on the ground that in Std.VIII there are only eight students. This order dated 15-11-1991 of the respondent No.1 was challenged by the petitioner in the special civil application No.8553/91 before the Court. This petition came to be decided by this Court on 17-12-1991, copy of the order of this court is there on the record at page No.19. The order dated 15-11-1991 was quashed and set aside. However, the Court made it clear that it will be open to the respondent to proceed further in accordance with the law. It is further observed that if the respondent issues notice and calls upon the petitioner to make submission, the petitioner shall cooperate with the same.

5. It is not the case of the respondent No.2 in the reply that the order of this Court aforesaid has been challenged by the State of Gujarat or its Officer by filing L.P.A. or the liberty which has been given to the respondent to proceed further in the matter has been availed of. From reply of the respondent No.2, in contra, I find that the respondent No.2 has made a categorical statement that as the order dated 15-11-1991

has been quashed and set aside by the Court in special civil application No.8553/91, the original permission dated 27-10-1989 is therefore revived. It has further been stated that it is up to the Board to take steps in the matter.

6. After decision of this Court in the special civil application No.8553/91, the petitioner approached to the respondent No.3 and requested that the school may be registered in pursuance to the order of the State Government dated 27-10-1989 so that the trust can get the grant in accordance with law and also the petitioner can get the permission to start Std.IX. It is the say of the petitioner in the petition that all throughout, the respondent No.3 told to the petitioner that they have not received the file from the respondents No.1 and 2 and therefore the name of the petitioner-school cannot be entered in the register. Then the petitioner has given legal notice to the respondents but none of them have responded to the same what to say to register the name of the school in the register maintained by the respondent No.3. When the petitioner could not get any relief from the respondent No.3, it approached to this Court by this petition and prayer has been made, as stated earlier, for direction to the respondent No.3 to register the name of the petitioner-school as well as to give direction to the respondents No.1 and 2 to pay grant.

7. The respondent No.3, as stated earlier, has not filed any reply to the special civil application. So it is to be stated at the cost of repetition that an inference has to be drawn that it has no objection in case this petition is allowed by the Court.

8. Learned counsel for the petitioner contended that under section 48 of the Gujarat Secondary Education Act, it is the duty of the respondent No.3 to carry out the directions given by the State Government. In his submission, the as State Government has passed the order dated 27-10-1989 for registration of the school of the petitioner, the consequential order to be passed in pursuance thereto by the respondent No.3 is to register the name of the school and the trust. It has next been contended that order passed by the State Government dated 27-10-1989 has been accepted by the State Government as what it clearly transpires from the reply that the State Government has no objection in registration of the school then the Board has to comply with the same. Lastly, it is contended that this Court has protected the petitioner, meaning thereby, the respondent No.3 has been given direction to register the school as well as the

trust and the respondents No.1 and 2 have been directed to pay grant to the petitioner and this interim relief continues till date, as a result of this order, this matter stood concluded in favour of the petitioner.

9. Shri M.A. Bukhari, learned AGP appearing for the respondents No.1 and 2 submitted that this Court may give direction to the Board to decide the application filed by the petitioner for registration of the school and the trust. He further submits that when the application has been filed by the petitioner for registration of the school and the trust, then the Board has to decide the same. Whether it grants or rejects the application is immaterial but decision has to be taken.

10, I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

11. Because of inaction or omission, deliberate or bonafide, of the Board, this avoidable litigation is in the Court. Once an application has been made by a party to the statutory authority or constitutional authority, it is its duty to attend the application and pass appropriate order in accordance with the law. Whether it is to be accepted or rejected, I find sufficient merits in the contention of the learned AGP, is immaterial, material is that the application has to be attended and decided finally. Time and again this Court deprecated this approach of the Officers of the State Government, the Officers of the Constitutional and statutory authorities, but it hardly seems to be material for them. Worse part is that even nobody has cared to remain present in these proceedings from the side of the respondent No.3. It has also not cared to file reply to the special civil application. For want of reply to the special civil application, the averments made in the special civil application stand uncontroverted from the side of the respondent No.3 and the same are to be taken to be correct and as a result of which it is to be taken that the application filed by the petitioner and the legal notice sent by it to the respondent No.3 have not been decided. However, I am not in agreement with the submission made by Shri Bukhari that this court may give direction to the Board to decide the application of the petitioner for registration of the school and the trust. More than sufficient opportunity was there with the Board to consider and decide this application and further if it had any objection to grant the same, it could have brought those objections in this petition to the notice of the Court but it has not been done and it is to be stated at the cost of repetition that in fact and

substance, it has no objection whatsoever in registering the name of the petitioner-school and the trust.

12. Section 17 of the Gujarat Secondary Education Act, 1972, lays down the powers and duties of the Board and for the purpose of deciding this case, subsection 17 thereof is relevant, which is reproduced herein and reads as under:

to register in accordance with the prescribed procedure, secondary school for teaching such subjects in standards eight and onwards leading to the Secondary School Certificate Examination as it deems fit and to grant permission for opening higher standards or additional divisions of existing standards in such schools;

13. Section 48 of the Act aforesaid confers the powers upon the State Government to issue directions to the Board as it may necessary in regard to all or any of the matters specified in section 17. This section further provides that the Board shall comply with such direction given by the State Government to it under this section.

14. It is not the case of the respondents No.1 and 2 that the State Government is not empowered to grant application filed by the trust for registration of the school. A conjoint reading of subsection (17) of section 17 and section 48 of the Act gives out that in a given case the trust can directly apply to the State Government for registration and if that application is granted then this order has to be complied with by the Board. It is understandable where the Board has any objection against the registration of the school it can be brought to the notice of the State Government and State Government in its turn after considering the same, may reconsider the matter and pass appropriate order but in this case, it has not been done by the Board either before the State Government or even before this Court and as a result of which its action of remaining total silent in the matter is difficult to appreciate.

15. This Court in the facts of this matter has rightly considered it to be a fit case to grant relief at the initial stage by an interim order and in pursuance thereof, it is not the case of the respondents No.1 and 2 as well as the respondent No.3 that the petitioner-school has not been registered. It is also not the case of the petitioner that the order of this Court granting interim relief has not been complied with by the respondents,

No.1, 2 and 3. In the facts of this case, the school of the petitioner stood registered in the register maintained by the Board and only a ministerial act has to be done in case it is not done so far, to make necessary entry in the register. The order to this regard has been passed by this Court, though by interim relief, and in the facts of this case, this relief is to be granted at the final stage and accordingly, this special civil application is allowed and the Board is directed to enter the name of the petitioner-school in the register maintained of the secondary schools. Grant has already been sanctioned by the respondents No.1 and 2 so no further order needs to be passed in this regard and the petitioner shall continue to get the grant till it is otherwise cancelled by the State Government in accordance with law. Rule is made absolute. No order as to costs.

zgs/-